

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES,	:	
	:	
	:	
-against-	:	<u>ORDER DENYING</u>
	:	<u>DEFENDANT’S MOTION TO</u>
	:	<u>COMPEL FURTHER <i>BRADY</i></u>
	:	<u>PRODUCTION</u>
	:	
CLIVER ANTONIO ALCALA CORDONES,	:	11 Cr. 205 (AKH)
	:	
Defendant.	:	
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ALVIN K. HELLERSTEIN, U.S.D.J.:

On February 8, 2022, the Government moved *ex parte*, pursuant to Section 4 of the Classified Information Procedures Act, 18 U.S.C. app. 3 (“CIPA”) and Fed. R. Crim. P. 16(d)(1) for a protective order, allowing it not to produce, or alternatively, substitute with a written summary, certain materials that contain classified information. As provided by CIPA, the Government did not submit its motion to Defendant but notified the Court and defense counsel of its *ex parte* submission. Thereafter, Defendant requested an *ex parte* conference to present its theory of the case and applicable defenses, so that I could better assess whether the Government’s proposed deletions and substitutions would impermissibly deny Defendant his right to a fair trial. I granted the request and held the conference.

I previously had denied a motion by Defendant to compel further *Brady* production (Dkt. No. 89); however, following the *ex parte* conference, Defendant moved again, in a letter filed under seal, to compel *Brady* production, identifying with specificity the relevant evidence alleged to be within the Government’s possession but not yet disclosed to Defendant. The Government filed a written response, also under seal, opposing Defendant’s renewed motion to the extent that Defendant sought documents not in the Government’s possession. In response


to the remaining requests, the Government supplemented its initial CIPA motion to address how its proposed productions would be responsive to Defendant's recent requests. Redacted versions of both Defendant's motion and the Government's opposition now appear on the public docket. (Dkt. No. 102.)

On September 7, 2022, I signed a protective order, granting the Government's motion under CIPA, (Dkt. No. 101), but did not expressly rule on the motion to compel.

Defendant's motion to compel is denied, in part because Defendant seeks production of documents not within the Government's possession, and in part, as moot because the Government's productions pursuant to CIPA are responsive to Defendant's remaining requests.

SO ORDERED.

Dated: October 21, 2022
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge